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NOTES.

SPENDTHRIFT TRUSTS—ASSIGNMENT BY CESTUI QUE TRUST.

As an illustration of how firmly the doctrine of spendthrift trusts is established in the law of Pennsylvania, the Supreme Court recently decided that where a testatrix gave a share of her estate to her executor to pay the income to her son, "but no part of the principal of said estate is to be given to my said son for five years after my death, and then only when in the judgment of my executors 'he shall prove himself' to be entirely competent and qualified to take proper care of the same," the son cannot assign or sell such share within five years from the death of the testatrix, and if he attempts to do so, his assignee or vendee takes no valid title.¹

The appellant, assignee of the legatee, filed a petition ask-

¹ Siegwarth's Estate, 226 Pa. 591.

ing for an accounting by the trustee of the *cestui que* trust, treating his share of the estate as absolute; but it was held, that irrespective of the character of the estate in the legatee, there is seated upon it an active trust at least for a period of five years, and maybe longer, and inasmuch as the five-year period had not yet expired, he has not come into possession of his share which is still held by the executors in trust for the uses and purposes stated in the will; and that it is not necessary to consider or determine the kind or character of the estate given to the legatee, because the time has not yet arrived either for himself or for his assignee to demand that the estate be turned over to the person or persons ultimately entitled to the use and enjoyment of it. The hands of all parties are tied during that period.

This was clearly an attempt by the testatrix to vest the fee in the legatee, but to hold it in abeyance for a period of five years or longer at the discretion of the executors; the income to be paid to him in the meantime; for the word "estate" when used by a testator, and not restrained to a narrower signification by the context of the will, is sufficient to carry the fee. An examination of the authorities in jurisdictions where spendthrift trusts are allowed indicates that the doctrine is strictly limited to equitable life estates; for alienability and liability for the donee's debts are two necessary incidents of a fee simple estate;² a provision not to aliene being repugnant to the estate granted. It is respectfully submitted, therefore, that it is important to consider the kind and character of the estate given to the legatee, in determining whether the restraint sought to be imposed is valid or not.

The validity of a limitation over of a life interest is not questioned either in England or America; but where an estate was devised "unto and to the use of" a daughter, her heirs and assigns, subject to the provision that in case she should at any time be declared a bankrupt, the devise should be void, and the premises should go, remain and be unto and to the use of her children, it was *held* that the daughter took a fee simple estate, and as a condition pure and simple is repugnant to such an estate, the provision in the will was void;³ but Chitty, J., said that had the provision been, "I give to my daughter the property for her life, and if she become bankrupt, over to somebody else, and if she does not become bankrupt, then to her in fee," it would be subject to a different construction. The conditional limitation would have been good.

² 50 Albany Law Journal, p. 5.

³ *In re Machn*, L. R. 21, Ch. Div. 838.

If the trust is to *pay* the income to the beneficiary, although for his support, his creditors, if not expressly excluded, can reach all that the beneficiary is entitled to even in jurisdictions where these trusts are allowed.⁴ Thus where the testator by his will gave to his wife during her life the income of all the estate "to be for her comfort and support," expressing a wish that she provide for an unmarried daughter, and that a "house and grounds be kept as a home" for them, it was *held* that after the daughter's death the wife had the absolute disposal of the income during her life, and that it might be reached by her creditors.⁵ The test is, would the executors of the *cestui que* trust have a right to call for any arrears? If so, the interest is vested, and the assignee would have the right to call for the future income or interest.⁶ Applying this test to the facts in *Siegwarth's Estate*, it would seem to follow that even under the doctrine of spendthrift trusts, the income might be assigned during the five-year period; but the Court does not expressly decide this point. The doctrine of spendthrift trusts is absolutely repudiated in England and in many American jurisdictions; and being of extremely doubtful public policy, and admittedly inconsistent with the rules of common law, any extension of the doctrine must be viewed with apprehension unless clearly justified by changing social conditions.

G. H. B.

WHEN MAY CORPORATIONS REFUSE TO REGISTER ON THEIR BOOKS TRANSFERS OF STOCK?

In the case of *O'Neil v. Wolcott Mining Co.*,¹ W, the owner of 3,000 shares of stock, endorsed the certificate in blank, with a power of attorney, and placed it in the hands of his agent D. D represented to C that he was owner of the shares, showing the certificate and power of attorney, and represented further that the stock would be transferred upon the books of the corporation on request. Relying upon these representations, C bought the shares, on condition that the corporation would transfer title on their books. The corporation refused to transfer title on their books. Their defense was: (1) that thirteen years before the above transaction, W had advised them that he had lost some stock certificates, and had requested

⁴ Ames on Trusts, 2nd Ed., 405 Note.

⁵ *Maynard v. Cleaves*, 149 Mass. 357.

⁶ *Perry on Trusts*, § 386.

¹ 174 Fed. 527.